

**CITY OF MORGAN HILL  
JOINT SPECIAL AND REGULAR CITY COUNCIL AND  
SPECIAL REDEVELOPMENT AGENCY MEETING  
MINUTES - SEPTEMBER 5, 2001**

**CALL TO ORDER**

Mayor/Chairman Kennedy called the special meeting to order at 5:30 p.m.

**ROLL CALL ATTENDANCE**

Present: Council/Agency Members Chang, Carr, Sellers, Tate, and Mayor/Chairman Kennedy

**DECLARATION OF POSTING OF AGENDA**

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

**5:30 P.M.**

**CLOSED SESSION:**

City Attorney/Agency Counsel Leichter announced the following closed session items:

**1.**

**PUBLIC EMPLOYEE PERFORMANCE EVALUATION**

Title: City Attorney  
Authority: Government Code 54957

**6:30 P.M.**

**2.**

**CONFERENCE WITH LEGAL COUNSEL - POTENTIAL AND EXISTING LITIGATION:**

**CONFERENCE WITH REAL PROPERTY NEGOTIATORS**

Legal Authority: Government Code 54956.8 & 54956.9(a) & (c) (1 potential case)  
Real Property(ies) involved: APN 728-31-007 & 008; 25.50 acres located on the southwesterly side of Cochrane Road (St. Louise Hospital property)  
City Negotiators: Agency Members; Executive Director; Agency Counsel; F. Gale Conner, special counsel; Rutan & Tucker, special counsel  
Case Name: San Jose Christian College v. City of Morgan Hill  
Case Number: Santa Clara County Superior, No. CV 799179  
Closed Session Topic: Potential Existing Litigation/Real Estate Negotiations

**3.**

**CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**

Significant Exposure to Litigation  
Authority: Government Code Section 54956.9(b)  
Two (2) Cases

**4.**

**CONFERENCE WITH LEGAL COUNSEL - REAL PROPERTY NEGOTIATOR**

Legal Authority: Government Code 54956.8  
Real Property Involved: 17.58 acre parcels located on the east side of Condit Road, bound  
by Condit Road, Tennant Avenue, Barrett Avenue and Murphy  
Avenue (APN 817-13-017)  
Negotiating Parties:  
For City/Agency: City Manager/Executive Director; City Attorney/Agency Counsel;  
Director of Business Assistance & Housing Services  
For Property Owners: Virginia Lomanto Trustee  
Closed Session Topic: Acquisition of Real Property

**5.**

**CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION**

Authority: Government Code Section 54956.9(a)  
Name of Case: City of San Jose v. Morgan Hill Unified School District, City of Morgan Hill  
Case Number: Superior Court, County of Santa Clara CV794073

**6.**

**CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**

Initiation of Litigation Pursuant to Government Code Section 54956.9(c) (1 potential case)

**OPPORTUNITY FOR PUBLIC COMMENT**

Mayor/Chairman Kennedy opened the closed session items to public comment. No comments were offered.

**ADJOURN TO CLOSED SESSION**

Mayor/Chairman Kennedy adjourned the meeting to closed session at 5:35 p.m.

**RECONVENE**

Mayor/Chairman Kennedy reconvened the meeting at 7:01 p.m.

**CLOSED SESSION ANNOUNCEMENT**

Mayor/Chairman Kennedy stated that a closed session was held on the City Attorney's performance evaluation. He indicated that no reportable action was taken.

City Attorney/Agency Counsel Leichter announced that Closed Session Items 2-6, as listed above, would be continued to the conclusion of the agenda.

**SILENT INVOCATION**

**PLEDGE OF ALLEGIANCE**

At the invitation of Mayor/Chairman Kennedy, Lori Escobar led the Pledge of Allegiance.

**INTRODUCTIONS**

None

## **PRESENTATION**

Mayor Kennedy presented Finance Director Dilles and his staff, Assistant Finance Director Reza, Accountants Jones and Reroma, with a Certificate of Achievement for *Excellence in Financial Reporting*.

## **PROCLAMATIONS**

Mayor Kennedy presented Marion Smith, National Society of Daughters of the American Revolution, with a proclamation, declaring the week of September 17 through 23 as *Constitution Week*.

Mayor Kennedy read a Proclamation into the record, joining the Department of Health and Human Services in Celebrating September 2001 as *National Alcohol and Drug Addiction Recover Month*.

## **CITY COUNCIL REPORT**

Council Member Chang reported the following: 1) South County Regional Wastewater Authority (SCRWA) has agreed to send a will serve letter for the Calpine Phase II project, approving peaker plants in Gilroy. 2) Last Wednesday, a grand opening was held for the beautiful Villa Ciolino project, a 20% setaside housing project started 3+ years ago to replace a trailer park in bad condition. 3) She received word that the City of San Jose, City of Morgan Hill and the Morgan Hill Unified School District settled their lawsuit. Therefore, a second high school will be constructed. 4) Staff advised her that a groundbreaking ceremony will take place on October 20 for the Community Center. 5) She noted other projects taking place (e.g., widening of Highway 101, purchase of the soccer field for a future sports complex, in the process of purchasing land for the aquatic center, hiring of the architectural firm for the indoor recreation center). She stated that these activities have occurred due to the efforts and support of the City Council and staff.

Mayor Kennedy announced that the City is moving forward with a lot of exciting projects that youth members in the community will be able to take advantage of such as an indoor recreation center, an indoor swimming pool, an outdoor sports complex, an aquatic center, temporary/permanent skateboard/BMX park/facility, an expanded library facility, and a community center.

## **CITY MANAGER'S REPORT**

City Manager Tewes invited the community to a groundbreaking ceremony for the new Community and Cultural Center to be held Saturday, October 20, 2001. He requested that item 8 be pulled from the Consent Calendar as a number of Council Members and he have potential conflicts of interest as the street resurfacing project abuts owned properties. He indicated that a special procedure would be utilized to handle Consent Calendar Item No. 8.

## **CITY ATTORNEY'S REPORT**

City Attorney Leichter reported that the September Litigation Summary has been distributed this evening.

### **PUBLIC COMMENT**

Mayor/Chairman Kennedy opened the floor to comments for items not appearing on the agenda.

Lori Escobar, El Toro Youth Center, stated that she was overwhelmed with the help received both financially and physically toward the El Toro Youth Center Expansion. She presented the Mayor and City Council with a plaque in appreciation of their support. She indicated that Council Member Tate spearheaded the fundraising efforts. She also presented plaques to Planning Manager Rowe, Director of Business Assistance and Housing Services Toy; Chief of Police Schwab; Santa Clara County Fire District Firefighter Xavier and other Firefighters; and Building Inspector DeLuna.

Marian Smith, 17645 Peak Avenue, stated her appreciation of the City Council's hard work. She said that she could not wait for the recreational facilities to get off the ground as they are desperately needed in the community. She felt that the City Council has kept its promise on the Visioning projects. She was pleased that the community would have a new library, the Cornerstone project, the Community Center, skateboard park as well as other facilities. She thanked Assistant to the City Manager Eulo and the City Council for working hard toward meeting and exceeding the state mandated recycling program. She congratulated the community for their efforts in recycling. She is looking forward toward seeing the hospital reopened.

Mayor Kennedy announced that on Saturday, October 6, a City Beautification Day will take place. Individuals willing to volunteer in this effort are asked to meet at City Hall at 8:00 a.m.. He indicated that various clubs, churches, and community groups will be going into the community to clean up litter. He stated that materials would be provided, including team captains to help lead the efforts to clean up the city. He encouraged members of the community to help beautify Morgan Hill.

### **CONSENT CALENDAR:**

### ***City Council Action***

Council Member Tate requested that item 12 be removed from the Consent Calendar as he would need to abstain from the vote.

**Action:**        *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Carr, the City Council unanimously (5-0) **approved** Consent Calendar Items 1-7 and 9-11 as follows:*

1.        **SUBDIVISION APPLICATION SD-00-10: MALAGUERRA - MANCIAS**  
***Action: Took No Action.** Thereby Concurring with the Planning Commission's Decision Regarding Approval of the Subdivision Map.*
2.        **RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDOS) 2001 QUARTERLY**

**REPORT NO. 3**

**Action:** *Accepted Report by Minute Action.*

**3. PURCHASE REPLACEMENT POLICE PATROL VEHICLES**

**Actions:** *1) Authorized the Purchase of Two Replacement Police Patrol Vehicles at a Total Cost of \$54,960, and 2) Declared the Outgoing Vehicles Surplus and Authorized Their Sale at Auction.*

**4. ACCEPTANCE OF SUBDIVISION IMPROVEMENTS FOR TRACT 9203, MISSION RANCH PHASE III - Resolution No. 5523**

**Actions:** *1) Adopted Resolution No. 5523, Accepting the Subdivision Improvements included in Tract 9203, commonly Known as Mission Ranch Ph. III, and 2) Directed the City Clerk to File a Notice of Completion with the County Recorder's Office.*

**5. ACCEPTANCE OF SUBDIVISION IMPROVEMENTS FOR TRACT 9260, CENTRAL PARK PHASE IV - Resolution No. 5524**

**Actions:** *1) Adopted Resolution No. 5524, Accepting the Subdivision Improvements included in Tract 9260, commonly Known as Central Park Ph. IV, and 2) Directed the City Clerk to File a Notice of Completion with the County Recorder's Office.*

**6. ACCEPTANCE OF SUBDIVISION IMPROVEMENTS FOR TRACT 9060, MONTE VERDE - Resolution No. 5525**

**Actions:** *1) Adopted Resolution No. 5525, Accepting the Subdivision Improvements included in Tract 9060, commonly Known as Monte Verde and 2) Directed the City Clerk to File a Notice of Completion with the County Recorder's Office.*

**7. AGREEMENT WITH THE STROMBOTNE LAW FIRM**

**Action:** *Authorized the City Manager to Execute a Second Amended Consultant Agreement with the Strombotne Law Firm.*

**9. APPROVAL OF RIGHT-OF-WAY PURCHASE AGREEMENTS FOR BUTTERFIELD EXTENSION, PHASE IV PROJECT (APN: 817-59-001, 817-59-007, AND 817-59-006)**

**Actions:** *Authorized the City Manager to Execute Purchase Agreements with the Owners of APNs 817-59-001, 817-59-007 and 817-59-006 for Total Compensation of \$489,400 Plus Escrow and closing Costs for the Acquisition of These Properties.*

**10. FINAL MAP APPROVAL FOR CAPRIANO (TRACT 9264), PHASE II**

**Actions:** *Approved and Authorized the Recordation of the Final Map.*

**11. CITY POSITION ON LEAGUE OF CALIFORNIA CITIES RESOLUTIONS**

**Action:** *Approved Subcommittee Recommendation on Direction to the Morgan Hill Voting Delegates to the League of California Cities Conference.*

**8. AWARD OF CONTRACTS FOR 2001-02 STREET RESURFACING AND**

### **RECONSTRUCTION PROJECT-PHASE I**

Mayor Kennedy stated that the proposed construction is within 500 feet of some Council Members' neighborhoods that the Council Members reside in. Therefore, certain Council Members would need to recuse themselves from this item.

City Attorney Leichter indicated that Council Member Chang, Mayor Pro Tempore Sellers and Mayor Kennedy have potential conflicts of interest because the proposed paving project would be performed close to their residences. She stated that the City would invoke the "Rule of Necessity" which provides that the Council will draw by lots to determine which Council Member would participate and consider the item.

City Clerk Torrez explained that Mayor Kennedy, Council Member Chang and Mayor Pro Tempore Sellers would be asked to draw a piece of paper, indicating that one piece of paper contained an "X." The Council Member drawing the piece of paper marked by an "X" would be asked to participate and vote on this item.

By the luck of the draw, Council Member Chang selected the paper marked by an "X" and therefore would be participating in this item.

City Manager Tewes, Mayor Pro Tempore Sellers and Mayor Kennedy recused themselves from this agenda item.

Council Member Tate referred to Agenda Item 17 relating to a development agreement for a project located on Malaguerra. The development agreement states that the project would be resurfacing Malaguerra out to Silverwings Court. He noted that this item is proposing to resurface Malaguerra. He wanted to make sure that Malaguerra would not be resurfaced twice.

Assistant Public Works Director Struve indicated that staff is aware of the requirement contained in the development agreement. Should the project complete the paving improvements, staff would work out a reimbursement agreement. He stated that staff did not want to miss the opportunity to take care of the roadway in a timely manner based on its current condition.

Council Member Chang opened the floor to public comment.

Pat Ansuini, Sr. indicated that he is developing the Malaguerra-Mancias project. He stated that this project would be resurfacing Malaguerra from Silverwings Court to Peet Avenue. He requested additional information on what is proposed by the City's resurfacing project.

Mr. Struve indicated that the project is rehabilitating or applying a surface treatment to the pavement as opposed to the installation of improvements. This is a maintenance program which involves overlay and slurry, depending on the condition of pavement.

No further comments were offered.

Council Member Tate noted that this is a \$2.25 million street improvement project, noting that

Redevelopment Agency funds and street renewal funds are being used to upgrade the pavement in streets in the community.

**Actions:**      *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council, on a 3-0-2 vote with Mayor Pro Tempore Sellers and Mayor Kennedy abstaining, 1) **Appropriated** an Additional \$150,000 from the Unappropriated Street Fund Balance to Provide Additional Funding for the Project; 2) **Awarded** Contract to Granite Construction Company for the Construction of the 2001-02 Phase I Street Resurfacing and Reconstruction Project in the Amount of \$2,257,801.02; and 3) **Approved** Professional Services Contract with Harris and Associates for Inspection Services and Project Administration for \$96,150.*

Mayor Pro Tempore Sellers, Mayor Kennedy and City Manager Tewes resumed their seats on the dais.

## **12. SPECIAL CITY COUNCIL MEETING MINUTES OF AUGUST 15, 2001**

**Action:**      *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Chang, the City Council, on a 4-0-1 vote with Council Member Tate abstaining, **Approved** the Minutes as Written.*

## ***City Council & Redevelopment Agency Action***

Council/Agency Member Tate requested that items 13, 14 and 15 be removed from the Consent Calendar.

## **13. GMP METAL PLATING SEWER FEE AND SMALL BUSINESS LOANS**

Council/Agency Member Tate noted that staff is recommending that the City Council/Redevelopment Agency approve a five-month deferral on payments. He asked if an 8-9 month deferral should be approved based on the uncertainty of today's economy.

Director of Business Assistance and Housing Services Toy informed the City Council/Agency Commission that the five-month deferral was at the request by the applicant. He deferred Council/Agency Member Tate's question to the applicant.

Mr. Gutierrez responded that five months should be sufficient to get him back on track to commence payments.

**Action:**      *On a motion by Council/Agency Member Tate and seconded by Council/Agency Member Chang, the City Council/Agency Commission unanimously (5-0) **Authorized** the City Manager/Executive Director to Do Everything Necessary and Appropriate to Provide GMP Metal Plating a Five-Month Deferral in the Payments of the Principal for Both the City Sewer Fee Financing Agreement and the Redevelopment Agency Small Business Fee Deferral Agreement, Provided GMP Makes Interest Only*

*Payments on the Sewer Fee Financing Agreement.*

**14. APPROVAL OF CONTRACT FOR DOWNTOWN PLAN UPDATE CONSULTANT SERVICES**

Council/Agency Member Tate felt that the scope of work is much more detailed than he thought it would be for the Downtown Plan, specifically, on alternative approaches to what the City/Agency would be doing with the Sunsweet property and Depot Avenue. He felt that there should be discussion by the Council/Agency so that it can understand why there is a heavy emphasis on the Sunsweet property and Depot Avenue and not on the other side of Monterey Road.

Director of Community Development Bischoff informed the City Council/Agency Commission that there are three studies: 1) Monterey Corridor Study, 2) Depot Study; and 3) Downtown Study. He indicated that staff applied for a grant with the Metropolitan Transportation Commission (MTC) to look at street improvements needed on Depot Avenue. The city was successful in receiving the grant. He stated that \$50,000 of the study is being paid by MTC. Once this study is completed, staff anticipates going back to MTC and applying for a grant for the installation of the improvements. Of the \$178,000 contract amount for this project, \$50,000 is being paid for by MTC, a major component of the Downtown Study. He said that a lot of discussion and emphasis were given to the need to update the Downtown Plan as part of the General Plan update. He said that the City needs to look at the Downtown Plan to determine whether the City wants to move forward with implementation of the items not yet implemented. In addition, there has been a lot of discussion about transit oriented development in the Downtown Plan into a Transit Village Plan. Staff plans to accomplish this as part of the study. If approved, there may be an opportunity for additional funding for implementation in the future. Also, to be reviewed is parking in the downtown area to determine future growth and needs. To be reviewed is a longer Monterey Road corridor. He indicated that the public will have an opportunity to formulate and guide the studies by the establishment of a task force consisting of downtown business owners and citizens in the community. Interviews will be conducted with downtown businesses and other community leaders to determine the strengths and weaknesses of the downtown. A number of community workshops will be held to determine improvements needed in the downtown. It is proposed to have the task force meet over a nine-month period in order to draft a plan and receive public comments. He stated that it is intended to draw from all aspects of the community to make sure that the City has a plan that serves everyone's needs.

Mayor Pro Tempore/Agency Member Sellers stated that a letter was written last week by young individuals addressing the lack of activities. He said that a goal of this project is to identify the needs of the community and to determine what can reasonably be expected. He recommended that focus be given to reaching out to the community. He requested that staff advise the City Council/Agency Commission as to the dates of the interviews once known. He stated that he wanted to make sure that the City has an open and inclusive process to make sure that individuals who are interested in the study are given advance notice.

In response to Council/Agency Member Chang's question, Mr. Bischoff stated that staff felt that the cost to undertake the study was a reasonable one.

Mayor/Chairman Kennedy stated that he is satisfied with the costs presented as they seemed



reasonable based on his knowledge of costs relating to the traffic component.

Council Member/Vice-chairman Carr expressed concern with the preparation of the scope the work, noting that one of the first things to be accomplished is reviewing the existing Downtown Plan. He further expressed concern that this is a 1990 Plan that may be outdated. It is his hope that the Plan would not be seen as a template to work from and that it would be reviewed and set aside, starting with a clean state.

Mr. Bischoff indicated that the Downtown Plan may contain some good ideas and that they not be discarded. He said that it is hoped that the result will be a new plan. He stated that one of the items looked at as part of the General Plan Update was the downtown area. Staff is looking at part of this as expanding the downtown to east of Butterfield and north/south of Monterey Road by one block. There was discussion of seeing a vital downtown as part of the General Plan update, the types of uses that can be seen, and what can be done to enhance the downtown vitality. He felt that the economic study would assist to address this issue. In terms of the Housing Element, a transit orientation will be studied. He said that one can increase residential density in the downtown area in order to encourage shopping, supporting downtown businesses. Higher densities would make housing affordable and in closer proximity to transit opportunities.

Mayor/Chairman Kennedy stated that it is his hope that the downtown area would be extended more than one block north/south.

**Action:** *On a motion by Council/Agency Member Tate and seconded by Mayor Pro Tempore/Agency Member Sellers, the City Council/Agency Commission unanimously (5-0) **Authorized** the City Manager to Execute a Consultant Services Agreement for Contract Consultant Services at a Cost Not to Exceed \$178,884.*

**15. SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF AUGUST 15, 2001**

**Action:** *On a motion by Mayor Pro Tempore/Agency Member Sellers and seconded by Council Member/Vice-chairman Carr, the City Council/Agency Commission, on a 4-0-1 vote with Council/Agency Member Tate abstaining, **Approved** the Minutes as written.*

**16. SPECIAL AND REGULAR REDEVELOPMENT AGENCY AND SPECIAL CITY COUNCIL MEETING MINUTES OF AUGUST 22, 2001**

**Action:** *On a motion by Council/Agency Member Tate and seconded by Mayor Pro Tempore/Agency Member Sellers, the City Council/Agency Commission, on a 4-0-1 vote with Council/Agency Member Chang abstaining, **Approved** the Minutes as written.*

**Action:** *It was the consensus of the City Council **to consider** agenda item 28 at this time.*

***Redevelopment Agency Action***

**OTHER BUSINESS:**

**28. COMMUNITY PLAYHOUSE**

Business Assistance and Housing Services Manager Maskel presented the staff report.

Agency Member Sellers expressed concern regarding the process. He felt that some of the costs made a lot of sense and acknowledged that there were a lot of unknowns before getting to this phase, specifically the mechanical issues and the adjustments requested by the Agency Commission. He noted that the City is dealing with an older structure and that you will come up against unexpected issues. However, he did not believe that there was appropriate communication between staff and the architect. He said that the Agency Commission was advised as to the cost for the project only to be told that the cost has gone up significantly. The concern is whether the City can afford the increase in cost and community perception. He felt that it was important to have the best facility possible but felt that everyone needs to look closely at all issues. He stated that he would like to discuss the design changes recommended by the Architectural Review Board and whether it is believed that the changes are crucial. He stated that he understood the need to move the building twice but that he did not understand the cost to move it twice. He felt that the additional \$60,000 to move the building a second time a short distance would make the move easier the second time.

Ms. Maskel stated that conservative estimates were previously presented. Staff was hoping that one company would conduct the first move with another company to be hired by the contractor responsible for rehabilitating the building to conduct the second move. This would allow the rehab contractor to oversee the second move to make sure that the building is brought up to standard. Staff and the architect have had to rethink some of the issues and are now looking at using the first moving company for the second move, reducing the cost for the second move.

Agency Member Sellers expressed concern with identifying budget numbers because once identified, contractors tend to spend the money identified. He expressed concern that the lead abatement containment was not anticipated. He wanted to make sure that the landscape and hardscape between the two buildings are integrated and that there is not a duplication in costs. He requested that the architect and landscape designer for the community center be consulted. He did not believe that the escalation reserve of 8% was needed. If it is anticipated that the escalation reserve will be used, he felt that the amount should be lowered in order to minimize the contingency. He noted that the cost for a project management and CIP administrator were inadvertently not included.

Agency Member Chang stated that she was not concerned as much about the price for moving the building twice as she was with the condition of the old and fragile building. She asked if it would be better to have one mover move the building in order to have one mover guarantee the condition of the building?

Ms. Maskell stated that staff has met with the house mover to inquire if the building would survive the move. She indicated that the mover plans to brace and secure the building to ensure preservation of the structure.

Kurt Schindler, ESL, project architect, explained the reason for the increase in mechanical, electrical

and landscape costs.

Agency Member Chang felt that at 7,300 square feet, the cost was reasonable per square footage versus what is being paid for the new Community Center.

Mr. Schindler identified the following changes to the design: gable modified, windows enlarged, the height of the stage was reduced by three feet, bathroom wing offset in order to maintain the drip line of the adjacent tree, and reduced massing to the rear of the building. The changes requested by the Architectural Review Board (ARB) were as follows: 1) additional windows along the south side of the building; 2) use of a para swing door versus a roll up door, and 3) the addition of small windows to the back of the stage to provide relief to the rear of the building. Trash enclosure will be included. He indicated that you can reduce the cost by approximately \$35,000-\$40,000 by reducing the landscaping between the two buildings. He was not sure if the electrical and mechanical costs could be reduced without impacting the quality of the building/use.

Vice-chairman Carr stated that he was not as concerned with the cost of the changes as he was for the functional changes as recommended by the ARB. He asked if the changes requested by the ARB change the functionality of the loading dock?

Mr. Schindler responded that the roll up doors are more efficient from a space perspective. He indicated that you can get a better acoustical seal with a swinging door. He said that the upper windows are simply a scale issue. The ARB expressed concern that there was a 21-foot plate height and therefore recommended relief to the rear.

Vice-chairman Carr indicated that it was his hope that something that would be done to address the functionality of the doors for the loading dock as it relates to roll up doors versus swing out doors to abate noise. He was hoping that there were other ways to mitigate noise in order to make the loading dock fully functional. He stated that the full window was not a concern to him. He noted that added costs would be associated with landscaping and windows that would be opening to an auditorium where you would need darkness for shows. There would be added cost to blocking light. He expressed concern with the functionality in the increased costs. He recommended that if certain design issues do not add to the functionality of the building, that the added costs not be incurred. He stated that if the Agency Commission is already paying for increased landscaping, the south side windows be eliminated and that focus be given to the landscaping to cover up the blank wall.

Chairman Kennedy inquired what areas can be reduced in order to bring the project back to the original budget?

Mr. Schindler responded that landscaping can be reduced to bring down the cost of the project. The electrical costs are ones that have to be included unless there is a change order in the other building. He said that reduction in distribution of electrical would have some detriment to the theatrical capability of the building because there are heavier uses in the auditorium and the stage.

Agency Member Chang noted that in the adopted budget contained approximately \$3 million in the park funds. She asked if it would be possible to use park funds toward the landscaping?

Executive Director Tewes responded that the City has two essential capital funds to finance park improvements: AB1600 (Development Impact Fees) and the Park Maintenance Fund. He indicated that the AB1600 funds would not be appropriate to use for landscaping. He stated that capital improvements are made using Park Maintenance Funds. He said that this is discretionary funds and can be used for this purpose.

Mr. Schindler stated that oftentimes, in theater projects, you buy or rent theatrical equipment. He said that there is approximately \$20,000 of theatrical lighting fixtures that can be rented or purchased at a later time. He said that you need to have a modest amount of lighting fixtures to function as a theater. There was also an increase in cost for the seats from \$180 to \$225 per seat based on seats being used today. He indicated that theater seating is being proposed, noting that custom bench seating would result in the same cost.

Chairman Kennedy opened the floor to public comment. No comments were offered.

Chairman Kennedy recommended that the Agency Commission authorize the architect and consultants to eliminate the project and escalation contingencies. If there are cost increases, these increases to return to the Agency Commission for review and approval. He further recommended that the architect and the consultants look at ways to reduce the mechanical and building moving costs. He recommended that the architects and consultants return in approximately two weeks to reduce additional costs out of the budget.

Agency Member Tate stated that he has trust and faith in the architect and staff in the job that they have done to bring a good and adequate proposal in terms of what the Agency Commission wanted for the playhouse. He felt that Agency Member Carr's questions were ones that needed to be addressed. He stated that he was disappointed in the Agency/Council that projects return with request for additional funding. The City/Agency will be facing the design costs for a new library, recreation center, and the aquatic center. He recommended that the Agency/Council conduct a brainstorming session on what it can do in terms of the Agency contingency for its planning purposes. He did not know if the Agency wants to take money away from this project when the architect was directed to return with a design as directed by the Agency Commission.

Chairman Kennedy felt that the question is whether the City is budgeting properly and whether enough money is being included in the budget or is the City allowing the cost to creep up because of additional requests being made by the Agency, public, or items that the architects, consultants, or engineers want to include. He felt that cost management was a missing component. He felt that the Agency Commission may be equally at fault for wanting to have nice amenities. He wanted to place tighter cost management of the project. He recommended that the consultants be directed to go back and eliminate unnecessary costs from the project, looking at less expensive ways to doing the HVAC, landscaping, and being more creative with design. He recommended that the Agency Commission take a risk on the contingency and escalation costs by not including them in the budget, managing more tightly to the budget.

Agency Member Sellers expressed concern that cost estimates return that were significantly higher than originally presented. He stated that he appreciated the explanation for the escalated costs. However, he felt that there were oversights that were not original considered/anticipated such as the

contingencies, project management and CIP administration. He could deal with the cost increase because the mechanical detail is such that it requires the items. However, he expressed concern with the fact that the contingency funds keep going up. He would like to see things reviewed more closely, paying more attention to details as they come before the Agency. He recommended that the Agency Commission minimize or eliminate the contingencies in order to reduce costs.

Executive Director Tewes stated that this playhouse project is a telescoped, fast tracked process compared to the community center. He agreed that the City needs to do a good job in project management, noting that staff is learning in that regard. He said that it would be helpful, as the City develops the program stage, for the Agency Commission to advise staff regarding design standards and identified budget. He said that there is give and take on the quality, size and functionality of a given project. He clarified that the amount presented in April did not include any cost estimations because design work had not been completed. The Agency Commission was presented four different schemes in order to decide what design level the Commission wanted to see in the project. Staff's major error was in suggesting to the Agency, at the time, that \$1.9 million is the budget when it was not. It was only a preliminary estimate of cost. The Agency Commission sent staff on a course to design a very functional facility that the community would be proud of. He ensured the Agency Commission that the end result would be one that it would be proud of.

Agency Member Chang noted that the project was increased in size by 100% and that the project was fast tracked. She felt that the original estimate was low. However, she felt that the city would end up with a well designed 200 seat facility. She stated that she was uncomfortable eliminating the contingency cost as it is needed. She supported funding the building in order to build a quality design.

Chairman Kennedy recommended that the contingency amount be reduced to 5% and the elimination of the escalation cost. He questioned the need to pay \$70,000 for a project manager at this stage as a construction manager will be on the job. Further, the project manager would be controlling all costs. He further requested that the architect look at the mechanical HVAC and landscaping cost to see if there is a way to reduce these costs.

Vice-chairman Carr felt that everyone agrees that this project is important to the Agency and to the community. He stated that the CIP has a finite amount of dollars. He noted that two projects have come before the Agency for increase in budget (community center and playhouse). He felt that all CIP funding have been spent. Each time there is a budget increase, a project down the line will get damaged or hurt. He asked if the Agency/Council needs to take a step back and look at what the priorities are? He expressed concern that a project down the line will get short change because it is the last project that the Agency/Council was able to acquire. He recommended that staff have a greater anticipation of some of these costs either by budgeting a larger contingency or by spending more time up front. He was surprised that lead abatement and containment costs were left out of the cost estimates. He said that the Agency is facing timelines based on the timeline for the Community Center and the fact that this building has to be moved. He felt that the City needs to move forward so that the community center does not get delayed. He inquired if the ARB recommendations are necessary and whether they affect the functionality of the building? He felt that there needs to be discussion about the tower. Also, the Agency needs to discuss whether it wants to incur increased landscape costs.

Agency Member Chang agreed that the Agency/Council will be short of funding to complete some of the future Visioning projects. She recommended that prioritizing of the visioning projects/funding be agendaized for a future discussion.

Agency Member Tate stated that he would agree with Chairman Kennedy's recommendation on the contingencies. He supported Vice-chairman Carr's recommendation of having a prioritization session, including discussion about how future projects are to be estimated so that the Agency can look at the whole project and not each individual piece. He did not support reducing landscaping as the entire community center project is represented by its outward appearance to the community. He felt that the outward appearance is bolstered tremendously by the landscaping. He was pleased to see that additional landscaping is proposed so that the project will be attractive to the community driving by every day and not just to the individuals who visit the playhouse. He argued against cutting back landscaping.

**Action:** *Agency Member Sellers made a motion, seconded by Agency Member Chang, to approve a 5% contingency, eliminate the escalation reserve, review project management to see if it can be reduced, retain the original design of the tower due to its distinctiveness and uniqueness, eliminate the two south wall windows, review the doors, and address acoustic concerns for possible redesign.*

Chairman Kennedy stated that he would support the contingency reduction and elimination of the escalation reserve. He recommended that the Agency budget 50% of the project management, engineers and architects to reduce the mechanical and landscaping costs by 20%, and to request the one contractor bid for both moves.

Agency Member Sellers stated that he would support Chairman Kennedy's amendment. However, should the 20% reductions to the mechanical and landscaping costs prove to be problematic, that they return to the Agency Commission. He also recommended that staff review the community center costs to see if it included landscaping in order to be more cost effective.

Chairman Kennedy stated that the suggested modifications would reduce the cost by \$281,000. Therefore, the net variance would only be approximately \$468,000.

Agency Member Tate stated that he would support the motion with the exception of reducing the landscaping. If the motion can be stated that the landscaping would not be reduced, he would support the motion.

Agency Member Sellers felt that the cost would be reduced due to the fact that there would be integration of landscaping between the playhouse and the community center.

Agency Member Chang recommended that staff be given the flexibility of looking at the goal of cutting the cost by 20%, if possible. She requested that everyone keep in mind that the Visioning projects were contemplated six years ago and that costs have gone up since that time. Therefore, you can no longer have the same numbers that were identified previously.

Chairman Kennedy recommended that staff be asked to look at a 20% reduction on the mechanical

and landscaping. Should staff find that they cannot make the reduction or if there are major changes, these issues are to return to the Agency Commission.

Vice-chairman Carr stated his support of the motion and that he supported Agency Member Tate's comments that staff takes a hard look at all of the reductions. If there is a change in the functional nature of the facility of what the Agency really wants it to be, it needs to return to the Agency Commission for further discussion, including the landscaping.

Mayor Kennedy stated that he specifically tried to avoid cutting into the functionality of the playhouse. If the City works to reduce the budget, everyone will win overall.

**Action:**        *On a motion by Agency Member Sellers and seconded by Agency Member Chang, the Agency Commission amended the motion as follows: 1) **approved** a 5% contingency; 2) **eliminated** the escalation reserve; 3) staff to **review** project management to see if it can be reduced; 4) **retained** the original design of the tower due to its distinctiveness and uniqueness; 5) **eliminated** the two south wall windows; 6) staff to **review** the doors and **address** acoustical concerns for possible redesign; 7) engineers and architects to **reduce** the mechanical and landscaping costs by 20% – returning to the Agency should said reduction change the functionality and product of the facility; and 8) staff to **review** the Community Center landscape design to determine if there is landscape integration between the Community Center and the Playhouse, eliminating duplication in landscape costs while ensuring that landscaping is not reduced. The motion carried unanimously (5-0).*

## ***City Council Action***

### **PUBLIC HEARINGS:**

#### **17.    ZONING AMENDMENT AND DEVELOPMENT AGREEMENT APPLICATIONS, ZA-00-19/DA-00-05: MALAGUERRA - MANCIAS - Ordinance Nos. 1529 & 1530, New Series**

Director of Community Development Bischoff presented the staff report.

Council Member Tate noted that the development agreement includes the 900' x 10' foot driveway to connect the Live Oak High School student parking lot to Half Road. It was his belief that this requirement was eliminated as part of the Live Oak High School remodel. He asked if this requirement was being replaced with another requirement?

Mayor Kennedy opened the public hearing.

Mr. Ansuini responded that the connection to the high school was included in the original application but was not a part of this application. It was his belief that this commitment was carried over to this year's application. He stated that another commitment has been substituted for the connection.

Dick Oliver, developer of Coyote Estates, referred to page 172, paragraph 14(n)(v) that reads: "Provide for the future extension of Mancias Drive to Peet Road. Should the City decide not to extend Mancias Drive to Peet Road, the property owner shall provide an alternative Measure P commitment valued at two points." It was his belief that this requirement should be changed because it is not consistent with what the Planning Commission adopted. He stated that there was significant discussion at the Planning Commission regarding the through connection of this project into the Coyote Ranch project. He said that it was a unanimous consensus of the Planning Commission that there is not to be a through street but that it be an emergency vehicle access only. The developer would be required to maintain the same point score under Measure P in order to satisfy the Measure P commitment. He indicated that following the meeting, he met with Mr. Mancias and agreed to visit the city to review the Measure P commitments to see if there was a way to meet this requirement. He discovered that in the Circulation category, there were two points garnered for the commitment to make a through street. However, the applicant maxed out on this category and only received the value of one point because he had too many points in this category already. It was his belief that under a proper analysis of the Measure P application, only one point needs to be made up. He recommended that the language be changed to read as follows: "~~valued at two points~~ to maintain the same overall point score." He indicated that he has written a letter to the applicant's engineer identifying three ways the points can be made up such as payment of in lieu fees.

Mr. Bischoff stated that it has been a policy of the Planning Commission and the City Council to have improvements made that would benefit the direct community instead of a cash payment that might be used elsewhere in the community. He recommended that paragraph 14(n)(v) be amended to state " . . . to have the same point value" instead of a "two point value." He recommended that paragraph 14(N)(i) be retained as the applicant received points for this commitment. He acknowledged that the driveway will not be built and that alternative commitment would need to be provided. He stated that the driveway was no longer required by the School District.

No further comments being offered, the public hearing was closed.

**Action:**        *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Approved** the Mitigated Negative Declaration.*

**Action:**        *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Waived** the Reading in Full of the Ordinance No. 1529, New Series, Approving the Residential Planned Development (RPD).*

**Action:**        *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council **Introduced** Ordinance No. 1529, New Series, by Title Only as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL, APPROVING A ZONING AMENDMENT TO ESTABLISH A PRECISE DEVELOPMENT PLAN FOR A 15-UNIT SINGLE-FAMILY PROJECT ON AN 8.87-ACRE SITE LOCATED ALONG MALAGUERRA AVENUE, NORTH OF SULLIVAN COURT. (APNs 728-25-016 & 017) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

**Action:**        *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers,*



*the City Council unanimously (5-0) **Waived** the Reading in Full of the Ordinance No. 1530, New Series, Approving the Development Agreement (DA).*

**Action:** *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council **Introduced** Ordinance No. 1530, New Series, by Title Only as follow: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT FOR A 15-UNIT SINGLE-FAMILY PROJECT ON AN 8.87 ACRE SITE LOCATED ALONG MALAGUERRA AVENUE, NORTH OF SULLIVAN COURT. (APNs 728-35-016 AND 017) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

**18. ZONING AMENDMENT APPLICATION ZA-01-14: MONTEREY - WEST COAST BEAUTY SUPPLY - Ordinance 1531, New Series**

Director of Community Development Bischoff presented the staff report. He indicated that should the Charter School improvements not be completed prior to the effective date of the ordinance, they would need to receive approval under a conditional use permit to move into the shopping center. Should Charter School be able to move in prior to the effective date of the ordinance, they would move in under a temporary use permit approval.

Council Member Carr stated that he drove through the shopping center and noted that there are more stores than he envisioned. He noted that parking is not a problem in the shopping center at this time. He asked if the City would be creating a situation where the parking would get worse or better by allowing certain uses? He did not believe that the shopping center is an appropriate location for the Charter School and a detriment to the center and long range planning for this area of the downtown. He did not know with these changes in conditional use permits what the City will accomplish other than allowing this one whole sale/retail use to locate in the shopping center.

Mr. Bischoff indicated that amendment to the PUD would allow some uses to locate in the shopping center through a conditional use permit and gives the city latitude and control of the situation, especially in terms of duration. It was his belief that the City has control and would not be opening the door to inappropriate uses.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Mayor Pro Tempore Sellers stated that in looking at the way the lease for the Charter School was structured and the level of improvements anticipated to be made to the facility, it is evident that the Charter School is looking at this site as a short term location. Should the departure of the major grocery store take place, this will result in a change to the center that would supersede any other uses. He felt that the changes as presented this evening make sense because they help anticipate natural business changes that are already occurring in the shopping center. He stated that he was anxious about the whole sale nature of the business but felt that the retail component more than balances this concern.

**Action:** *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Waived** the Reading in Full of the Ordinance No. 1531, New Series, Approving the Planned Unit Development (PUD) Ordinance.*

**Action:** *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council **Introduced** Ordinance No. 1531, New Series, by Title Only as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL, AMENDING A PLANNED UNIT DEVELOPMENT WHICH INCLUDES THE MORGAN HILL PLAZA AND MULTI-FAMILY RESIDENTIAL USES AT THE INTERSECTION OF MONTEREY ROAD AND DUNNE AVENUE (APN 767-09-018) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

**19. ORDINANCE REGARDING MASSAGE ESTABLISHMENTS - Ordinance No. 1528, New Series**

Chief of Police Schwab presented the staff report. He indicated that staff received comments today in support of the ordinance but requesting that the City Council extend the closing time for massage establishments to 11:00 p.m. He indicated that the reason the 9:00 p.m. closure was included in the ordinance was to try to have closing times remain consistent with the majority of retail closing times within the community.

Mayor Pro Tempore Sellers stated that given the high number of commuters in the community, it made sense to extend the hours of operation.

Chief of Police Schwab stated that in drafting the ordinance, staff was conservative with the closing hours due to the fact that late business hours raises concern to community members at large.

Mayor Kennedy felt that 10:00 p.m. appears to be a consistent closing time in a lot of establishments, noting that other cities use 10:00 p.m. as their closing time. Therefore, he would support amending the ordinance to allow a 10:00 p.m. closure.

Council Member Chang and Council Member Tate felt that based on the survey of other cities, the 10:00 p.m. closure appears to be a reasonable one.

Mayor Kennedy opened the public hearing.

Loron Roberts, Jr., certified massage therapist, requested that the ordinance be modified to identify the use as "massage establishment" as opposed to a "massage parlor." He requested clarification as to when payments of fees are required and whether the timing of payments of fee should be incorporated in the ordinance. He stated that massage therapists in the community believe that the fees are excessive. He referred to page 1 of the ordinance. The ordinance indicates that massage therapists are considered to be health and safety risk because they touch another person. He inquired why other professions which touch individuals were not included in the ordinance such as dentists, chiropractors, manicurists, electrolysis, etc., as they all touch people. He referred to page 12 of the ordinance relating to the number of individuals allowed in the same room at the same time. He said

that when an individual is preparing for a message, the message therapist is not normally in the room. He referred to page 13, section i (section 5.32.80). He stated that he does not lock doors, noting that some facilities have curtains. The last sentence of this section states that there should be no locking device on the doors to rooms in which messages are given. The ordinance states that you cannot have a lock on the door and felt that this was an unreasonable condition. He requested that the City Council reconsider the items being raised this evening.

Arsenia Cervantes concurred with the comments as expressed by Mr. Roberts.

Sue Julsen, certified message therapist, inquired why the Chief of Police considers message therapists health and safety risk to society? She asked where the Chief of Police thinks message therapist touch people when they perform messages? She stated that she finds the wording of the ordinance to be offensive and discriminating as some therapists are excluded who perform the same type of work that they do based on where they work (e.g., chiropractor/doctor's offices or hospital). She felt that the costs are excessive. The ordinance requires message therapist to see a physician to certify that they are not carriers of diseases. She wanted to know what the city thinks message therapists do that would pass a disease onto an individual. She did not believe that the ordinance would stop prostitution.

No further comments being offered, the public hearing was closed.

Chief of Police Schwab indicated that following the initial draft ordinance, the Police department received input and suggestions pertaining to the draft ordinance. One of the suggestions was to remove the clause that states that services must be paid for in advance. This requirement has been removed from the draft before the City Council. Regarding the issue of terminology, he informed the City Council that the ordinance changes the terminology from message parlor to message establishment. He stated that the issue of fees for the permit will be coming before the City Council at its next meeting. He indicated that the fees being proposed are based on the amount of time it takes staff to conduct the initial screening and processing of the permit. The resolution will outline the time being spent performing the various tasks and the cost involved to conduct the service. Regarding the question of locks on the dressing room doors, he said that this was a section taken from other message establishment ordinances from other cities. This would discourage illicit use while allowing free egress and ingress. He stated that the ordinance does look at ways to deter illicit activities and to allow staff to investigate and take action on illicit activities quicker and easier than using state laws regarding crimes of prostitution. The ordinance would establish common sense operating procedures. Regarding the question of whether or not the ordinance would discourage prostitution, it is anticipated that the ordinance would deter prostitution by an initial permit process and to react quicker should the issue arise again. Currently, the state regulates certain types of message therapy activities. The state regulates message therapy that occurs in a doctor's and chiropractor's office and even by a licensed barber. He indicated that the state regulates and certifies these professions where the message practitioners and message therapist's certificates and businesses are not regulated by the state. The state has reserved message therapy that occurs by certain professions, to local government, thus the reason for developing an ordinance for the city. He indicated that there is a one time fingerprint fee required in order to receive the initial permit, noting that the fees are regulated by the County.

Mayor Pro Tempore Sellers stated that he has received messages in the past and appreciates the

service provided to the community and that he appreciated listening to the concerns expressed. However, the goal of the City is to regulate and eliminate concerns raised last year. He stated that he initially had concerns with the proposed fees. However, these are fees associated with having to process a permit, noting that the fees would be reduced after the initial filing. He stated his support of extending the hours of operation to 10:00 p.m.

Mayor Kennedy stated that it is difficult to strike a balance between the City's goal of prohibiting illicit activities. He did not believe that the ordinance is intended to obstruct legitimate message practices. He read through the ordinance and sees that the ordinance is focused on trying to prohibit illicit activities. He did not expect legitimate massage businesses to be impacted. Therefore, he would be supporting the ordinance. He stated that the cost would be reexamined following a period of time. If it is found that the fees are excessive, he would support reducing the cost to actual costs.

**Action:** *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Carr, the City Council unanimously (5-0) **Waived** the Reading in Full of the Ordinance No. 1528, New Series, Enacting Chapter 5.32 (Massage Establishments) of Title 5 (Business Taxes, Licenses and Regulations) of the Municipal Code Regarding Regulation of Massage Establishments.*

**Action:** *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council **Introduced** Ordinance No. 1528, New Series by Title Only as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ENACTING CHAPTER 5.32 (MASSAGE ESTABLISHMENTS) OF TITLE 5 (BUSINESS TAXES, LICENSES AND REGULATIONS) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING REGULATION OF MESSAGE ESTABLISHMENTS AND PRACTICES extending the hours of operation to 10:00 p.m., by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

## ***City Council and Redevelopment Agency Action***

### **PUBLIC HEARINGS:**

#### **20. AUTHORIZING THE REDEVELOPMENT AGENCY TO PAY FOR THE DEVELOPMENT OF THE AQUATICS COMPLEX - Resolution Nos. 5521 and MHRA-239**

Director of Business Assistance and Housing Services Toy presented the staff report.

Mayor/Chairman Kennedy opened the floor to public comment. Martine Kapetanic, informed the City Council/Agency Commission that the aquatic community supports the City Council/Redevelopment Agency in its efforts toward an aquatics complex. No further comments being offered, the public hearing was closed.

### ***City Council/Redevelopment Agency Action***

**Action:**      *On a motion by Council/Agency Member Tate and seconded by Council/Agency Member Chang, the City Council/Agency Commission unanimously (5-0) **Approved** the Payment by the Agency of All of the Value of the Land for and All or Part of the Cost of the Installation and Construction of an Aquatics Complex and Related Improvements to Serve the Ojo De Agua Community Project Area by Doing the Following:*

***City Council Action***

**Action:**      **Adopted** Resolution No. 5521.

***Redevelopment Agency Action***

**Action:**      **Adopted** Resolution No. MHRA-239.

## ***City Council and Redevelopment Agency Action***

### **OTHER BUSINESS:**

#### **21.      APPROVE AGREEMENT WITH UNION PACIFIC RAILROAD (UPRR) FOR AT GRADE CROSSING AT DOWNTOWN TRANSIT CENTER**

Director of Public Works Ashcraft presented the staff report. He indicated that 80% of what is being spent with this project will need to be spent again. However, the cost would be borne by the Valley Transportation Agency (VTA) as part of their project of double tracking.

Mayor Kennedy stated that the goal of meeting with UPRR officials in Roseville on September 13 is to get them to perform an aggressive schedule due to the life safety concerns associated with individuals crossing the railroad tracks from the city's parking lot to board the train. He said that the City will need to convince UPRR officials that this project is important to move up on the priority list. He indicated that the funding needs to be approved before UPRR officials agree to a schedule.

Mayor/Chairman Kennedy opened the floor to public comments. No comments were offered.

***Redevelopment Agency***

**Action:**      *On a motion by Agency Member Sellers and seconded by Agency Member Tate, the Agency Commission unanimously (5-0) **Appropriated** an additional \$100,000 from the unappropriated RDA Fund Balance for this project.*

***City Council***

**Action:**      *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Authorized** the City Manager, Subject to Review by City Attorney, to Execute an Agreement with Union Pacific Railroad to Perform Work Related to the Downtown Transit Center At-Grade Pedestrian Crossing in an Amount Not to Exceed \$361,309.*

**Action:**      *It was the consensus of the City Council/Agency Commission to consider Agenda Item*

*23 at this time.*

## ***City Council Action***

### **OTHER BUSINESS:**

#### **23. AUTHORIZE PROFESSIONAL SERVICES CONTRACT FOR PRELIMINARY DESIGN OF THE COMMUNITY INDOOR RECREATION CENTER**

Assistant Director of Public Works Struve presented the staff report.

Council Member Chang recommended that staff carefully evaluate actual budget costs for this project.

City Manager Tewes stated that staff would return to the City Council with refined cost estimates. What is being presented is planning level estimates based on the master plan and a range, noting that design cost estimates are included. He said that it would be inappropriate to compare the design cost estimates to be seen in the future to this budget, should the City Council approve this contract.

Mayor Pro Tempore Sellers felt that there was more flexibility associated with the Gunderson property than originally thought, noting some budget constraints. The committee felt that Noll & Tam was the best design team and that he was anxious to move into the next phase of this project.

Council Member Chang stated that she has not seen a project construction bid less than \$350 per square foot. She noted that the cost for the community center is \$430-\$450 per square foot. If the City Council is not realistic on what it will do, she felt that the City Council will repeat the conversation it had this evening with the community playhouse. She felt that the architect will budget based on the money that the City budgets.

Council Member Tate felt that all visioning projects need to be reviewed together and budgets identified.

Mayor Kennedy asked how the architect would manage the project in order to keep it within budget?

Janet Tam, Noll and Tam Architects, stated that she asked the estimators to help with conceptual and guesstimates of what a building of this type would cost. She said that a cost estimate of \$250 per square foot for building cost was identified. However, her firm is looking at a range. She said that she did not know the City's budget for this project until last week. Now that the numbers are known, she would let the City Council know what it can get for this budget. Should the City Council want a building that has all the amenities desired, she would so advise the City Council. She informed the City Council that the estimator builds in contingencies even at this point of concept design. She stated that the estimators are not just number crunchers but individuals involved in the conceptual process. The estimators will be asking the City what quality materials would be desired and whether a 10,000 or 13,000-square foot gymnasium is desired. It will be the firm's job to provide the City Council with the pros and cons and different options so that the City Council can make a choice. She stated that the scope of work is based on the RFP and that she would need to clarify the scope of work, indicating

that some assumptions were made. She agreed that one of the first things that needs to be done is to establish a budget for the project. In order to establish a budget, she would need to know the major components. She stated the program would be pinned down based on community input, as well as potential users, and the budget set aside for this project. Should the designed project not match the City's budget, she would return and advise the City Council how much more the project would require. She indicated that you can always design to a budget but that you cannot necessarily get everything desired if there is a finite amount of money budgeted.

**Action:**      *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Chang, the City Council unanimously (5-0) **Authorized** the City Manager to Negotiate a Consultant Services Agreement with Noll & Tam Architects and Planners to Provide Preliminary Architectural Design Services for the Community Indoor Recreation Center in an Amount Not to Exceed \$195,281.*

## **22.    REAL PROPERTY ACQUISITION PROCESS**

Director of Business Assistance and Housing Services Toy presented the staff report.

Mayor Pro Tempore Sellers stated that based on staff's report, it did not make sense to use commercial brokers.

**Action:**      *The City Council **received/accepted** the report.*

## **24.    CITY MANAGER'S EMPLOYMENT AGREEMENT**

Mayor Pro Tempore Sellers indicated that he and Council Member Carr met as the Council's subcommittee with City Manager Tewes. He stated that the City Council is pleased with the performance of City Manager Tewes, noting that the City Council has demanded a lot of him and that he has risen to the occasion. The City Council is appreciative of his efforts. Therefore, the subcommittee is recommending the following: 1) a \$20,000 compensation bonus this year, based on the level of work performed and based on similar evaluations seen in other communities where they have had similar levels of success. 2) The contract to be amended in three areas: a) tenure to be extended for one year as it makes sense for both the city and the city manager's employment agreement; b) additional latitude in terms of professional development and how it is to be carried out on a year to year basis; and c) that the severance pay be maintained at one year and not be reduced as it affords mutual protection and provides added assurance of the City Council's employment commitment, and gives added assurance to the City Manager.

Council Member Carr stated that this was a thorough evaluation process and felt that the City Manager has performed outstanding work, and that his leadership role has assisted in achieving the City Council's goals for the community. He addressed the extension of the contract for an additional year. He felt that it was important for the community and the City Manager to maintain a commitment. He stated his support of the additional clause as it relates to professional development.

Mayor Kennedy stated that City Manager Tewes has done an outstanding job this year and that the compensation package reflects this fact. He noted that the City Manager has moved every visioning

project along this year. He noted that the City has faced many difficult issues such as the closure of the St. Louise Hospital, the formation of the Morgan Hill Community Health Foundation, the kick off of the Morgan Hill Community Foundation, etc. He felt that the City Manager has done an outstanding job in moving Morgan Hill in the direction that the City Council has been trying to move toward for many years. He felt that the contract and the bonus recommended reflects the City Council's level of confidence in his performance.

Council Member Chang stated that City Manager Tewes has done a great job and hopes that there are many upcoming years of success.

Council Member Tate felt that the City Manager has done a great job with many of the visioning projects.

**Action:** *On a motion by Council Member Tate and seconded by Council Member Chang, the City Council unanimously (5-0): 1) **Approved** an Amendment to the City Manager's Employment Agreement, 2) **Considered** the Subcommittee's Report and Recommendations, and 3) **accepted** the Subcommittee's recommendation of granting a \$20,000 bonus this year, extending the contract one year, and implementing a professional development plan; and maintaining a one-year severance pay.*

City Manager Tewes expressed his thanks and gratification for the recognition of the accomplishments and results already seen, noting that there is still more to do. He takes this recognition as a challenge to do good work for the community. He also thanked the City Council for its recognition of the entire organization in delivering to the community. The City Council's concern about employee retention and compensation are reflected in the packages to the employees. He said that staff has committed to engage in an organization-wide and systematic approach to employee retention issues. Staff will be reporting to the City Council on the results of this. He said that what is accomplished as an organization reflects the degree of management that is brought to it but also the quality of people and their motivation and interest. He stated that the City Council has assembled an outstanding staff in Morgan Hill, acknowledging that the City Council has given staff a challenging agenda. He thanked the City Council on behalf of the entire organization and stated that the organization looks forward toward the additional year on the term.

## **SECOND READING OF ORDINANCE:**

### **25. ADOPT ORDINANCE NO. 1522, NEW SERIES AND ORDINANCE NO. 1523, NEW SERIES**

**Action:** *On a motion by Council Member Tate and seconded by Council Member Chang, the City Council **adopted** Ordinance Nos. 1522 and 1523, New Series, as follows:*

**ORDINANCE NO. 1522, NEW SERIES** – An Ordinance of the City Council of the City of Morgan Hill Approving A Zoning Amendment to Establish a Precise Development Plan for a 62 Unit R-1(7,000) & R-2 (3,500)/RPD Single-Family Residential Planned Development Located on the South Side of Llagas Avenue, and the West Side of Hale Ave. (APNS 764-32-005, 010 & 012) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.



**ORDINANCE NO. 1523, NEW SERIES** – An Ordinance of the City Council of the City of Morgan Hill Approving a Development Agreement, DA-00-09 for Applications MP 99-24 & MP 00-10: Llagas/Hale-Delco (APNS 764-32-005, 010 & 012) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

**26. ADOPT ORDINANCE NO. 1524, NEW SERIES AND ORDINANCE NO. 1525, NEW SERIES**

**Action:** *On a motion by Council Member Tate and seconded by Council Member Chang, the City Council **adopted** Ordinance Nos. 1524 and 1525, New Series as follows:*

**ORDINANCE NO. 1524, NEW SERIES** – An Ordinance of the City Council of the City of Morgan Hill Approving a Zoning Amendment to Establish a Precise Development Plan for a 13 Unit Single -Family Attached Housing Project on a 4.13 Acre Parcel Located on the West Side of Hale Avenue, Approximately 1,000 Feet South of the Hale Avenue and Llagas Avenue Intersection. (APN 764-32-013) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

**ORDINANCE NO. 1525, NEW SERIES** – An Ordinance of the City Council of the City of Morgan Hill Approving of a Development Agreement, Da-00-10 for Application MP 99-31: Hale Avenue -Delco (Sheng) (APN 764-32-013) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

**27. ADOPT ORDINANCE NO. 1526 NEW SERIES AND ORDINANCE NO. 1527 NEW SERIES**

**Action:** *On a motion by Council Member Tate and seconded by Council Member Chang, the City Council **adopted** Ordinance Nos. 1526 and 1527, New Series as follows:*

**ORDINANCE NO. 1526, NEW SERIES** – An Ordinance of the City Council of the City of Morgan Hill Approving a Zoning Amendment to Establish a Precise Development Plan for a Six Single-family Residential Planned Development Located Between Nina Lane and Juan Hernandez Drive, North of Barrett Avenue, and South of San Pedro Avenue by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

**ORDINANCE NO. 1527, NEW SERIES** – An Ordinance of the City Council of the City of Morgan Hill Approving a Development Agreement, DA-00-13 for Application MP 00-05: Nina Lane - Shaw (APN 817-60-020) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

**Action:** *On a motion by Council/Agency Member Tate and seconded by Mayor Pro Tempore/Agency Member Sellers, the City Council/Agency Commission **agreed** to extend the meeting hour beyond 11:00 p.m.*

## ***CITY COUNCIL ACTION***

### **29. APPOINTMENT TO CALTRAIN'S POLICY ADVISORY BOARD**

Mayor Kennedy indicated that he would appoint Mayor Pro Tempore Sellers to the Caltrain's Policy Advisory Board subject to City Council ratification.

***Action:***        *On a motion by Council Member Tate and seconded by Council Member Chang, the City Council unanimously (5-0) **confirmed** the Mayor's appointment of Mayor Pro Tempore Sellers appointment to the Caltrain's Policy Advisory Board.*

### **FUTURE COUNCIL-INITIATED AGENDA ITEMS**

Visioning Projects/Funding Priorities.

### **RECONVENE TO CLOSED SESSION**

Mayor/Chairman Kennedy reconvened the meeting to closed session at 11:15 p.m.

### **RECONVENE**

Mayor/Chairman Kennedy reconvened the meeting at 11:55 p.m.

### **CLOSED SESSION ANNOUNCEMENT**

City Attorney/Agency Counsel Leichter announced that the City Council authorized the City Manager to execute agreement relating to the Sobrato High School site.

### **ADJOURNMENT**

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 11:57 p.m.

### **MINUTES RECORDED AND PREPARED BY:**

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**Irma Torrez, City Clerk/Agency Secretary**